

CLEAN AIR ACT AMENDMENTS OF 1977

House Conference Report No. 95-564

August 3, 1977

[To accompany H.R. 6161]

Pages 1077, 1502, 1529, 1530-1534

Attachment B

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CLEAR AIR ACT AMENDMENTS OF 1977

P.L. 95-95, see page 94 Stat. 685

House Report (Interstate and Foreign Commerce Committee)
No. 95-294, May 12, 1977 [To accompany H.R. 6161]

Senate Report (Environment and Public Works Committee)
No. 95-127, May 10, 1977 [To accompany S. 252]

House Conference Report No. 95-564, Aug. 3, 1977
[To accompany H.R. 6161]

Cong. Record Vol. 123 (1977)

DATES OF CONSIDERATION AND PASSAGE

House May 26, August 4, 1977

Senate June 10, August 4, 1977

The House bill was passed in lieu of the Senate bill. The House Report, the House Conference Report, and a Clarifying Statement are set out.

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MORE STUDY NEEDED

Those who call for more study, especially on matters like Clean Air Act amendments, are usually branded as foot-draggers. I readily acknowledge that studies are frequently employed as a dilatory tactic. But as I have demonstrated above, the prevention of significant deterioration policy of H.R. 6161 is genuinely in need of further study. We simply cannot predict with any certainty what its impact will be, we cannot predict how it can be rationally enforced, and we cannot predict how it will interrelate with the national energy policy. In view of the fact that we seem willing to absorb the health impact of continued delays in compelling highly polluted nonattainment areas to meet the national standards, I do not believe that a lowering of the national standards for those areas that have the cleanest air can be so urgent that a year delay would cause much damage.

I believe that we must be willing on occasion to junk the product of many hours work and start afresh. Taking account of our limited knowledge of the variables affecting ambient air quality, of the control technology available in the immediate future, of the need to encourage the most efficient overall utilization of our air and energy resources, and of the need for a predictable regulatory policy, I believe that we can devise a policy to protect the public health and welfare from any adverse effects associated with air pollution. But in order to do so, we must first reject the irrational, impractical, and inconsistent approach to the "prevention of significant deterioration" taken by H.R. 6161.

DAVE STOCKMAN.

HOUSE CONFERENCE REPORT NO. 95-564

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JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6161) to amend the Clean Air Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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enactment of this provision shall proceed as though this provision had not been enacted.

Thus, the regulatory authority granted under this provision is designed only to fill regulatory gaps and not to supersede any existing authority of other agencies.

REQUIREMENT TO PREVENT SIGNIFICANT DETERIORATION

House bill

The bill requires State implementation plans to be amended to include requirements that will prevent the significant deterioration of air quality where such air quality is presently cleaner than existing ambient air quality standards. Increments were established for all pollutants for which national ambient air quality standards exist. States were required to classify non-degradation areas under the following classification scheme:

Class I: 2 percent of the lowest national standard for all pollutants except 10 percent of the lowest national standard for particulate.

Class II: 25 percent of lowest national standard for each pollutant.

Class III: 50 percent of lowest national standard for each pollutant.

The State may develop measures to prevent significant deterioration other than the classification and increment scheme for pollutants other than sulfur dioxide or particulate. The Administrator must approve a State's plan for such pollutant if he determines that it will carry out the purpose of this section at least as effectively as an area classification plan.

Initially most areas which are cleaner than the national ambient air standards with respect to any pollutant would be classified as class II with respect to that pollutant. Areas where air quality is worse than these minimal Federal standards would not be classified at all, and would not be affected by this section.

Existing national parks and national wilderness areas over 25,000 acres in size and national monuments, national primitive areas, and

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national recreation areas exceeding 100,000 acres in size would be designated a mandatory class I and would remain permanently as class I. The following areas would begin as class I but could be redesignated by the State as class II: national parks and national wilderness areas between 1,000 and 25,000 acres, international parks over 1,000 acres, and national monuments, national recreation areas, national preserves, and national primitive areas all in excess of 10,000 acres.

To redesignate lands from class I to class II or from class II to class III, the State must conduct hearings and present extensive description and analysis of the effects of redesignation. The approval of affected local governments representing majority of the population is required. Prior consultation with the Federal land manager is required before Federal lands may be redesignated.

The bill identifies 8 categories of Federal lands that cannot be redesignated as class III: national wild and scenic rivers, national lake-shores or seashores, national wildlife refuges, national forests, and

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national monuments, national recreation areas, national preserves, national parks, national wilderness areas, and national primitive areas.

Major emitting facilities proposing to construct facilities must receive State permits. All sources with the design capacity to emit 100 tons per year or more of any pollutant must receive a permit. Exclusion of nonprofit schools and hospitals from this requirement is allowed at the State's discretion. EPA may review and disapprove permits only on a limited basis. In the event that the State fails to submit an approvable plan, EPA shall substitute and implement a plan.

At the discretion of the Governor, a State may exempt certain sources of pollution from being counted against the increment. The States must adopt plans for the control of sulfur oxide, sulfur dioxide and particulates within 12 months of the date of enactment. For other pollutants the period is 24 months.

* Sources in one area may not cause or contribute to increases in pollutants that exceed the applicable increments in any other areas. The levels in such other areas may be exceeded no more than one time per year. The only exception to this rule is that a Governor may allow a variance which would allow in class I areas the increment to be exceeded no more than 18 days per year, with a further limitation that in no case could the class II increment ever be exceeded under such a variance.

If increments are exceeded, the State is required to revise the State implementation plan to insure that the increment is not exceeded. Sources receiving new emission limitations would be eligible for compliance date extensions under the compliance date extension section of the bill.

Senate amendment

This section adds a new subsection (g) to section 110 of existing law. Each State which contains an area in which the levels of sulfur oxides or particulates are better than any secondary air quality standards (or primary standard, if that standard is more stringent) for that pollutant must adopt and enforce as part of its implementation plan provisions to prevent significant deterioration of air quality.

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Such protection is defined by maximum numerical pollution increments for sulfur dioxide and particulates, which can be added to existing levels of those two pollutants in designated areas. A second test of protection is provided in specified Federal land areas (class I areas), such as national parks and wilderness areas; these areas are also subjected to a review process based on the effect of pollution on the area's air quality related values.

The Environmental Protection Agency is required to study the establishment of such increments for other pollutants and to recommend within 1 year increments for stationary source emissions of nitrogen oxides and hydrocarbons.

All international parks regardless of size and each national memorial park and wilderness areas, exceeding 5,000 acres, and each national park which exceeds 6,000 acres, which exist on the date of enactment are designated as class I areas. All other lands, including other Federal lands and new national parks and wilderness areas shall be designated class II areas, but may be redesignated class I by the

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State. Indian tribes have similar redesignation authority. The concurrence of the Federal land manager is not required where Federal lands are involved.

Each new source with the potential to emit more than 11 tons of a pollutant per year and identified by category in the statute must apply to the State for a permit to construct a class II area. EPA is informed of the application and gives notice of it to Federal land managers and supervisors of potentially affected class I areas.

Any Federal land manager or supervisor of an affected class I area, or the Administrator of EPA, or a Governor of an adjacent State, is authorized to notify the State of potential adverse impact on the air quality within the class I area with a statement identifying potential impacts from the proposed facility. If no such notice is forthcoming, the applicant is required only to meet best available control technology requirements as statutorily defined and show that the class II increment will not be exceeded.

If there is such notice, the applicant would be required to demonstrate whether the class I increments would be exceeded in the class I areas, and—

If the permit applicant meets the class I increments, but the Federal land manager (not the supervisor) demonstrates to the satisfaction of the State that the applicant's emissions would nevertheless have an adverse effect on the air quality-related values of the Federal lands, the State must deny the permit; or

If the permit applicant does not meet the class I increments but demonstrates, to the satisfaction of the Federal land manager (not the supervisor), that there would be no adverse impact on the air quality-related values of the Federal lands, the State may issue the permit.

In the event a dispute occurs over any development or activity in an adjacent State, the Governor of the affected State may request the Administrator to enter into negotiations. If this is not successful, the Administrator shall then resolve the dispute.

The Senate concurs in the House regulatory provision with the addition of a provision that the grant of authority in the Conference

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substitute to the Environmental Protection Agency to regulate substances that may reasonably be anticipated to endanger the public health or welfare because of their effect on the stratosphere is not intended to supersede or preempt authority that other agencies may have under existing law to take regulatory action with respect to the same or similar hazards presented by products or activities subject to their jurisdiction.

With respect to EPA, the intent of the provision is that any rule-making commenced by the Administrator to protect the stratospheric ozone under the Toxic Substances Control Act prior to the date of enactment of this provision shall proceed as though this provision had not been enacted.

Thus, the regulatory authority granted under this provision is designed only to fill regulatory gaps and not to supersede any existing authority of other agencies.

In the event that the emissions from any new major emitting facility will cause or contribute to a pollutant increase greater than a class II

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increment for such pollutant, the Administrator shall, and a Governor may, seek injunctive relief to prevent the issuance of a permit or construction of that facility.

Conference agreement

The conference agreement adopts the statement of purpose from the House bill. Increments setting forth the maximum allowable increase in pollutants are stated in the statute for particulates and sulfur dioxide.

Within two years EPA is to propose regulations for increments or other means for preventing significant deterioration which would result from nitrogen oxides, hydrocarbons, carbon monoxide and oxidant. These proposed regulations would not go into effect for one year. At the end of that year, revision of State Implementation Plans would begin unless there was contrary Congressional action. If the Administrator finds that establishing and implementing significant deterioration regulations for HC, CO, NOx, or Oxidants would present special difficulties or problems of practicality, he is required to report to Congress. This report shall not act to stay the Administrator's duty to proceed with these regulations. States may adopt strategies other than increments for these other pollutants if the strategies taken as a whole, accomplish the purposes of this provision.

The proposed regulations are to provide: (a) specific numerical measures against which permits may be tested; (b) a framework for stimulating improved control technology; (c) protection of air quality values; and (d) fulfill the goals set forth in the purposes provisions.

Regulations for new ambient air quality standards are to be followed within 2 years by measures to prevent significant deterioration.

The specific increments are set forth in the statute as in the Senate bill, as follows: (a) class I, Senate bill; (b) class II, House bill except the 3 hour SO₂ increment, which becomes 512 micrograms per cubic meter; (c) class III, House bill except the 3 hour SO₂, which becomes 700 micrograms per cubic meter. Increments may not be exceeded more than once per year, except as provided in Sec. 165, which provides for variance from class I increments in Federal mandatory class I areas.

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The listing of lands to be included in mandatory class I areas is as in the Senate bill.

All other nondegradation areas are initially designated class II by statute upon enactment.

The Federal Land Manager is required to review national monuments, primitive areas, national preserves, and recreation areas and shall recommend any appropriate areas for class I designation where air quality related values are an important attribute of the area. The recommendations must be made within one year, with recommendations going to the State involved and to Congress. The Federal Land Manager shall consult with the states in determining these recommendations.

The procedural requirements for redesignating an area class III are accepted from the House bill. The following areas are not eligible for class III designation if the area is over 10,000 acres: national monuments, national primitive areas, national preserves, national wild and scenic rivers, national wildlife refuges, national lakeshores and na-

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tional seashores, new national parks, new national wilderness areas, and any other new areas in these categories created after enactment.

The House requirement for consultation with the Federal Land Manager prior to redesignation of Federal lands is adopted.

The State plan must require permits for:

- (a) All 28 categories listed in the Senate bill if the source has the potential (design capacity) to emit over 100 tons per year;
- and (b) any other source with the design capacity to emit more than 250 tons per year of any air pollutant. The state may exempt non-profit health or educational institutions from the permit requirement.

The conditions of the permit are as in the Senate bill, with the following additions:

- (a) A one year monitoring requirement may be waived by the State;
- (b) the language of the House prohibiting uniform or automatic buffer zone;
- (c) a completed permit application must be approved or denied not later than one year after filing an adequate application; and
- (d) for permits where the source proposes to exceed the class II increment, EPA approval of the States' determination of best available technology is required for sources not covered by adequate New Source Performance Standards.

EPA is to establish within 1 year by regulation the models to be used in analyzing air quality impact.

Indian tribes shall have the authority to redesignate tribal reservation lands as class I or class III. If an affected State disagrees with such a designation, the Governor may appeal to the Administrator to resolve the dispute. Indian tribes have the same appeals rights regarding redesignations by States and permits issued by States. In resolving such disputes, the Administrator must consider the extent to which the areas are of sufficient size to allow effective air quality management and whether the proposed area has the air quality values of such an area.

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All major emitting facilities must perform analysis of air quality impact in class I areas. The air quality related values test, including visibility, is applied to sources affecting class I areas.

The Administrator shall issue orders and seek other action to prevent the issuance of an improper permit.

The conference adopted the air quality modelling conference in the House bill and expects that EPA will seek the full participation of representatives of private and public interests. The definitions of "baseline" and "commenced construction" of the Senate bill were accepted, with a slight modification of the "commenced construction" definition to clarify the intent that a source must have approval before construction may begin, and that any source that has begun construction without approval may not argue that construction activity alone (within the meaning of clauses (i) and (ii)) is adequate to meet the requirement of paragraph (2A).

The House provision for emissions which the Governors may exempt from being counted against the increment is accepted for emissions from coal conversions, natural gas curtailments, temporary construction, and emissions from sources outside the United States.

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The House provision requiring that the State Implementation Plan must contain measures to insure that significant deterioration, as defined, will be prevented was accepted.

The conference adopted a modified version of the House provision which allows a variance to be granted from the nondegradation increments for up to 18 days a year. The variance would be available only for the sulfur dioxide 3 hours and 24 hour class I increments. The variance would allow class I increments to be exceeded on a total of 18 days per year. A violation of 3 hours in one day is considered a violation for the entire day. High terrain areas are defined as terrain 900 feet above the stack of the facility applying for the waiver.

A notice and public hearing must be held prior to granting the variance. The applicant must demonstrate, and the Governor must find, that the proposed facility cannot be built without the variance and, in Federal class I mandatory lands, that the variance will not adversely affect air quality-related values in the area. Before granting a variance, the Governor must consider the Federal Land Manager's recommendations and obtain his concurrence. If the Governor recommends a variance for Federal mandatory class I areas contrary to the recommendation of the Federal land manager, the Governor's recommendation and the recommendation of the Federal land manager are to be transmitted promptly to the President. The President may approve the variance if he finds that such a variance is in the national interest. The President must act in 90 days to affirm or deny the variance. The President's decision is a final, nonreviewable decision.

VISIBILITY

House bill

Section 116 of the bill would establish a national goal of remedying existing impairments of visibility in these areas and of preventing future visibility problems from arising in such areas.

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Within 18 months of enactment, the Administrator must submit a report to Congress detailing available methods whereby the national goal of visibility protection can be attained. The report must include recommendations for: Identifying sources which cause or contribute to visibility impairment; measuring visibility impairment; modeling techniques to determine manmade contribution to visibility impairment; methods of preventing visibility impairment.

Twenty-four months after enactment, the Administrator must promulgate regulations which assure attainment of the national goal. These regulations must provide guidelines to the States for implementing appropriate visibility protection techniques. Specifically, the regulations must require that States which contain mandatory class I areas, and States whose emissions cause or contribute to visibility problems in such areas, revise their implementation plan to include two elements. The first element of the plan revision is that the State plan must provide for installation of "best available retrofit technology" for existing major stationary sources which cause or contribute to visibility impairment in such areas. Second, the plan must be revised to incorporate a long-term (10-15 year) strategy for making maximum reasonable progress toward attaining the national goal.